

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PAUL BOVEE,

Plaintiff,

-v-

5:24-CV-1138

AUBURN POLICE
DEPARTMENT *et al.*,

Defendants.

APPEARANCES:

OF COUNSEL:

PAUL BOVEE
Plaintiff, Pro Se
21-B-1893
Bare Hill Correctional Facility
Caller Box 20
Malone, NY 12953

DAVID N. HURD
United States District Judge

ORDER ON REPORT & RECOMMENDATION

On September 19, 2024, *pro se* plaintiff Paul Bovee (“plaintiff”) filed this 42 U.S.C. § 1983 action alleging that defendants violated his civil rights during a traffic stop in Auburn, New York. *See* Dkt. No. 1. Along with his complaint, plaintiff moved for leave to proceed *in forma pauperis* (“IFP Application”). Dkt. No. 9.

On October 29, 2024, U.S. Magistrate Judge Mitchell J. Katz granted plaintiff's IFP Application and advised by Report & Recommendation ("R&R") that plaintiff's excessive force claim against defendant P.O. Luke Parker was adequately pleaded and could proceed. Dkt. No. 12.

However, Judge Katz determined that plaintiff's other claims should be dismissed with partial leave to amend. *Id.* In particular, Judge Katz advised that plaintiff's claims against defendant Auburn Police Department should be dismissed with prejudice, but recommended that all of plaintiff's other claims should be dismissed without prejudice. *Id.*

Finally, as to plaintiff's claims dismissed without prejudice, Judge Katz recommended that plaintiff be give thirty days in which to file an amended complaint (if he wanted to do so). *Id.*

Although the next step in the ordinary course of civil litigation would be to order service on defendant P.O. Luke Parker, Judge Katz recommended that the Court defer service on this defendant for now so that plaintiff would have a chance to decide whether or not he wanted to amend his pleading.

Plaintiff has not lodged objections to this R&R. Instead, plaintiff has filed a letter seeking a sixty-day extension of time in which to file an amended complaint. Dkt. No. 14.

Upon review for clear error, Judge Katz's R&R is accepted and will be adopted in all respects. *See* FED. R. CIV. P. 72(b). In addition, plaintiff's request for a sixty-day extension of time will be granted.

Therefore, it is

ORDERED that

1. The Report & Recommendation (Dkt. No. 12) is ACCEPTED;
2. Plaintiff's letter request (Dkt. No. 14) seeking a sixty-day extension of time in which to file an amended complaint is GRANTED;
3. Plaintiff's claims against defendant Auburn Police Department are DISMISSED with prejudice;
4. The Clerk of the Court is directed to TERMINATE Auburn Police Department as a defendant from the docket in this action;
5. Plaintiff's excessive force claim against defendant P.O. Luke Parker may proceed;
6. Service on defendant Parker is DEFERRED until the expiration of the sixty-day amendment period as noted below;
7. Plaintiff's remaining claims are DISMISSED without prejudice;
8. Plaintiff shall have SIXTY DAYS from the date of this Order in which to file an amended complaint to the extent authorized by Judge Katz's R&R and this Order;

9. Any amended complaint must be a complete pleading. It will supersede and replace the original complaint in all respects. Therefore, it must include all remaining facts and causes of action, including plaintiff's excessive force claim against defendant P.O. Parker;

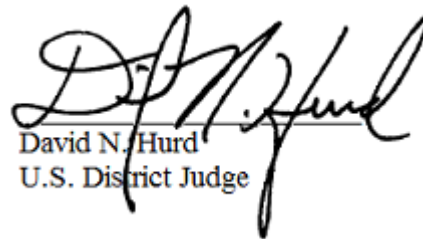
10. If plaintiff chooses to file an amended complaint within this sixty-day amendment period, the Clerk of the Court shall RETURN THE FILE to Judge Katz for further review; and

11. If plaintiff does not file an amended complaint, at the expiration of the sixty-day amendment period the Clerk shall RETURN THE FILE to Judge Katz for an appropriate order relating to service on defendant P.O. Parker.

The Clerk of the Court is directed to terminate the pending motions and set a deadline accordingly.

IT IS SO ORDERED.

Dated: November 20, 2024
Utica, New York.



David N. Hurd
U.S. District Judge